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FILED
DISTRICT COURT OF GUAM
DEC 30 2002
MARY L. M. MORAN
CLERK OF COURT

Attorneys for Plaintiff

IN THE DISTRICT COURT OF GUAM

ROLANDO A. DAYDAY

Plaintiff,

vs.

UNITED STATES OF AMERICA

Defendant.

CIVIL CASE NO. CIV **02-00038**

COMPLAINT

INTRODUCTION

1. This is a Federal Tort Claims Act action for damages for personal injuries arising from a traffic accident.

JURISDICTION

2. The Court has jurisdiction over this action pursuant to 48 U.S.C. §1424 and 28 U.S.C. §1346(b).

PARTIES

3. Plaintiff Rolando A. Dayday is adult individual and a resident of the Territory of Guam.

4. Defendant United States of America is the government of the United States of America. At all relevant times herein, the

ORIGINAL

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4 Immigration and Naturalization Service ("INS") of the Department of
5 Justice was an instrumentality of defendant United States of
6 America.

7
8 **FACTS**

9 5. At all relevant times herein, Paul F. Capistrano was employed
10 by the INS and was acting within the course and scope of his
11 employment with the INS.

12
13 6. On January 12, 2002, at approximately 6:45 p.m., plaintiff
14 Dayday was operating a 1988 Mitsubishi Mirage ("the Mirage") in an
15 easterly direction in the vicinity of the Yigo Church on Route 1 in
16 Yigo, Territory of Guam.

17
18 7. At said time and place, plaintiff Dayday was operating the
19 Mirage in a careful and prudent manner.

20
21 8. At said time and place, plaintiff Dayday had brought the
22 Mirage to a complete stop in order to yield to a vehicle executing
23 a turn in front of the Mirage.

24
25 9. At said time and place, Capistrano was operating a 1990 Dodge
26 D250 Pick-up owned by INS in an easterly direction directly behind
27 the Mirage.

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4 10. At said time and place, Capistrano operated the Dodge in a
5 negligent manner in that he failed to pay attention to traffic and
6 failed to notice that the Mirage had come to a stop in front of the
7 Dodge.

8
9 11. In operating the Dodge in the manner described above,
10 Capistrano violated laws of the Territory of Guam, including 16 GCA
11 §3301(b) and 16 GCA §3320.

12
13 12. As a direct and proximate result of the negligence of
14 Capistrano, the Dodge collided with the rear end of the Mirage.

15
16 13. On June 8, 2002, plaintiff Dayday, by and through a process
17 server employed by his counsel, served a "Claim for Damage, Injury
18 or Death form" (Standard Form 95 (Rev. 7-85), Prescribed by Dept.
19 of Justice, 28 CFR 14.2) on the INS office on Guam and the U. S.
20 Attorney's Office on Guam.

21
22 14. Defendant has failed to finally dispose of the above-described
23 claim within six months after its submission.

4
5 CLAIM FOR RELIEF
6 PERSONAL INJURY

7 15. Plaintiff Dayday repeats and realleges each and every
8 allegation of paragraphs 1 through 14 of the complaint herein.

9
10 16. As a direct and proximate result of the negligence of
11 defendant's employee, plaintiff Dayday has suffered severe injuries
12 to his body, including multiple cervical subluxation, thoracic
13 subluxation, cervical sprain or strain, thoracic sprain or strain,
14 joint dysfunction, and cervicobrachial syndrome, all of which caused
15 severe pain and suffering.

16
17 17. As a further direct and proximate result of the negligence of
18 defendant's employee, plaintiff Dayday incurred medical and
19 incidental expenses in the amount of \$2,211.00.

20
21 18. As a further direct and proximate result of the negligence of
22 defendant's employee, plaintiff Dayday lost income in an amount to
23 be proven at trial.

24
25 DEMAND FOR RELIEF

26 WHEREFORE, plaintiff Rolando A. Dayday prays Judgment be entered
27 against defendant as follows:
28

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- 4 1. For general damages for the personal injury to plaintiff in
5 the sum of \$95,000.00;
6
7 2. For medical expenses of plaintiff in the amount of \$2,211.00;
8
9 3. For lost income of plaintiff in an amount to be proven at
10 trial;
11
12 4. For costs of suit to the extent allowed by law; and
13
14 5. For such other and further relief as is just and proper.
15

16 LAW OFFICE OF KEOGH & FORMAN
17 Attorneys for Plaintiff

18
19 DATE:

12/30/02

By:

ROBERT L. KEOGH

4
5 VERIFICATION

6 I, the undersigned, being first duly sworn, depose and say
7 that I am a party to the above-entitled matter; the foregoing
8 statements are true of my own knowledge, except as to matters which
9 are therein stated on my information or belief; and as to those
10 matters I believe them to be true.

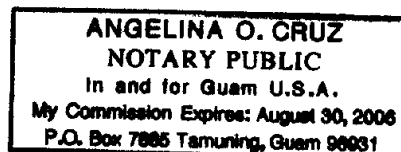
11
12 DATE: 12-30-02

ROLANDO A. DAYDAY
13
14
15

16 In and For Guam, U.S.A.)
17) ss.
18 City of Hagatña)

19 SUBSCRIBED AND SWORN TO before me this 30th day of
20 December, 2002 by Rolando A. Dayday.

21
22 Angelina O. Cruz
23 Notary Public



United States District Court

DISTRICT OF Guam

ROLANDO A. DAYDAY,
Plaintiff

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER: **02-00038**

UNITED STATES OF AMERICA,

Defendant.

TO: (Name and address of defendant)

UNITED STATES OF AMERICA

ACKNOWLEDGED RECEIPT

By: *John Cruz*

Date: *12.30.02*

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

ROBERT L. KEOGH, ESQ.
Law Office of Keogh and Forman
Suite 105, C&A Prof. Bldg.
251 Martyr St., Hagatna, Guam 96910

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Mary L. M. Moran

CLERK

DEC 30 2002

DATE

/s/ Walter M. Tenorio

(BY) DEPUTY CLERK